

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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ARULSENTHILK SHANMUGAM, an individual, and SUJAI SHANMUGASUNDARAM, an individual,

No. 2:20-cv-01647

Plaintiffs,

15 v.
16 MERCEDES-BENZ USA, LLC, a
17 Delaware Limited Liability
Company, and DOES 1 through 20,
inclusive.

MEMORANDUM AND ORDER RE:
DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS

Defendants.

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Plaintiffs Arulsenthilk Shanmugam and Sujai Shanmugasundaram ("plaintiffs") brought this action against Mercedes-Benz USA, LLC ("Mercedes-Benz"), seeking damages for breach of implied warranty of merchantability and express warranty under the Song-Beverly Warranty Act, Cal. Civ. Code § 1792, et seq., and fraudulent inducement/concealment. (See generally Compl.) (Docket No. 1 at Ex. 2.) Mercedes-Benz has

1 moved for judgment on the pleadings with respect to plaintiffs'
2 claim for fraudulent inducement/concealment and plaintiffs'
3 prayer for punitive damages. (See Mot. for J. on Pleadings)
4 (Docket No. 7.)

5 I. Factual and Procedural Background

6 On or about November 30, 2018, defendants Mercedes-Benz
7 and Does 1 through 20, inclusive, manufactured and/or distributed
8 into the stream of commerce a new 2018 Mercedes-Benz GLE350, VIN
9 4JGDA5JB4JA995451 ("Vehicle") for its eventual sale/lease in the
10 state of California. (See Compl. at ¶ 4.) On or about December
11 30, 2018, plaintiffs purchased the Vehicle from Niello Volkswagen
12 in Sacramento, California. (See id. at ¶ 5; see Docket No. 1 at
13 Ex. 1.) Although Vehicle was considered a "new motor vehicle"
14 under the Song-Beverly Warranty Act, it was in fact a used car
15 and had been driven over 11,000 miles by its previous owner
16 before plaintiffs purchased it. (See id. at ¶ 6.) Along with
17 the lease of the Vehicle, plaintiffs received written warranties
18 and other express and implied warranties. (See id. at ¶ 7.)

19 On or around November 28, 2018, plaintiffs delivered
20 the subject vehicle to an authorized Mercedes-Benz repair
21 facility. (See id. at ¶ 16.) Plaintiffs complained that the
22 Vehicle had a horrible smell within the air conditioning, and
23 whether the car was parked inside or outside, it still had a
24 rotten-milk smell. (See id.) The repair facility technicians
25 cleaned the evaporator and replaced the air conditioner filters.
26 (See id.) On or around March 19, 2019, plaintiffs again
27 delivered the Vehicle to an authorized Mercedes-Benz repair
28 facility with complaints of a rotten milk smell when the air

1 conditioning was turned on. (See id. at ¶ 17.) The repair
2 facility technicians could not replicate the smell. (See id.)
3 On or around August 9, 2019, plaintiffs again delivered the
4 Vehicle to an authorized Mercedes-Benz repair facility for repair
5 with complaints of "airmatic struts issues and transmission
6 shuddering." (See id. at ¶ 18.) The repair facility technicians
7 replaced the transmission mount, airmatic struts, and performed
8 "bio-pledge anti-microbial protection treatment" due to the foul
9 smell from the air conditioning. (See id.) On or around October
10 25, 2019, plaintiffs again delivered the Vehicle to an authorized
11 Mercedes-Benz repair facility for repair with complaints of a
12 foul rotten milk smell coming from the air conditioning. (See ¶
13 19.) The repair facility technicians once again could not
14 replicate the smell. (See id.) Each time that the Vehicle was
15 returned to plaintiffs, the service technicians represented that
16 the Vehicle had been repaired, was safe to drive, and all repairs
17 were covered under the Mercedes-Benz written warranty. (See id.
18 at ¶¶ 16-19.) Each time that the plaintiffs delivered the
19 Vehicle to a Mercedes-Benz authorized service and repair
20 facility, defendants represented to plaintiffs that they could
21 and would conform the Vehicle to the applicable warranties and
22 that all the defects had been repaired. (See id. at ¶ 12.)
23 Plaintiffs reasonably relied on these representations. (See id.
24 at ¶¶ 16-19.)

25 Prior to purchasing the Vehicle, plaintiffs reviewed
26 marketing brochures, listened to commercials about the qualities
27 of the Mercedes-Benz GLE350, and relied on statements made during
28 the sales process by Mercedes-Benz agents and within the

1 marketing brochures provided by Mercedes-Benz. (See id. at ¶
2 15.) However, Mercedes-Benz and its authorized agents did not
3 publicly or privately disclose to plaintiffs any information
4 about the air conditioner system defect. (See id.) Plaintiffs
5 allege that these omissions were material to plaintiffs' decision
6 to purchase the Vehicle and that had Mercedes-Benz and/or its
7 authorized agents publicly or privately disclosed the air
8 conditioner system defect, plaintiffs would not have purchased
9 the Vehicle. (See id.) Mercedes-Benz or its representatives
10 failed to conform the Vehicle to the applicable warranties
11 because defects, malfunctions, mis-adjustments and/or
12 nonconformities continued to exist even after a reasonable number
13 of attempts to repair were given. (See id. at ¶ 12.)

14 II. Discussion¹

15 Federal Rule of Civil Procedure 12(c) provides that
16 "[a]fter the pleadings are closed -- but early enough not to
17 delay trial -- a party may move for judgment on the pleadings."
18 In ruling on a motion for judgment on the pleadings brought
19 pursuant to Rule 12(c), "the allegations of the non-moving party
20 must be accepted as true, while the allegations of the moving

21 ¹ Mercedes-Benz requests that the court take judicial
22 notice of an order granting Mercedes-Benz USA's Motion for
23 Judgment on the Pleadings issued by Judge Percy Anderson of the
24 Central District of California. (See Request for Judicial Notice
25 at Ex. A.) (Docket No. 7-1.); see Nafisi v. Mercedes-Benz USA,
26 LLC, Case No. 2:20-cv-9309 PA (MAAx) (C.D. Cal. Mar. 31, 2021).
27 It is well established that a court may take judicial notice of
court records in another case. See United States v. Howard, 381
F.3d 873, 876 n.1 (9th Cir. 2004) (citing United States v.
Wilson, 631 F.2d 118, 119 (9th Cir. 1980)). Plaintiffs have not
objected. Accordingly, the court will take judicial notice of
this decision for purposes of noting that the order was made, but
not for the truth of its findings or conclusions.

1 party which have been denied are assumed to be false." See Hal
2 Roach Studios, Inc. v. Richard Feiner and Co., Inc., 896 F.2d
3 1542, 1550 (9th Cir. 1990) (internal citations omitted).
4 Judgment on the pleadings is proper when the moving party clearly
5 establishes on the face of the pleadings that no material issue
6 of fact remains to be resolved and that it is entitled to
7 judgment as a matter of law. See id. However, judgment on the
8 pleadings is improper when the district court goes beyond the
9 pleadings to resolve an issue; such a proceeding must be treated
10 as a motion for summary judgment. See id.

11 Rule 12(c) is functionally identical to Rule 12(b) (6)
12 and the same standard of review "applies to motions brought under
13 either rule." See Dworkin v. Hustler Magazine, Inc., 867 F.2d
14 1188, 1192 (9th Cir. 1989). Accordingly, whether brought under
15 Rule 12(b) (6) or Rule 12(c), the inquiry before the court is
16 whether, accepting the allegations in the complaint as true and
17 drawing all reasonable inferences in the plaintiff's favor, the
18 complaint has stated "a claim to relief that is plausible on its
19 face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).
20 "The plausibility standard is not akin to a 'probability
21 requirement,' but it asks for more than a sheer possibility that
22 a defendant has acted unlawfully." Ashcroft v. Iqbal, 556 U.S.
23 662, 678 (2009). "Threadbare recitals of the elements of a cause
24 of action, supported by mere conclusory statements, do not
25 suffice." Id. Although legal conclusions "can provide the
26 framework of a complaint, they must be supported by factual
27 allegations." Id. at 679.

28 A. Fraudulent Concealment

1 Mercedes-Benz argues that plaintiffs have failed to
2 allege particularized facts supporting knowledge of falsity or
3 intent to conceal by Mercedes-Benz and other necessary components
4 of their fraud claim. (See Mot. for J. on Pleadings at 5.)
5 Plaintiffs respond that a claim for fraudulent concealment can
6 succeed without the same level of specificity required by a
7 normal fraud claim. (See Opp'n to Mot. for J. on Pleadings at 3.)
8 (Docket No. 9.)

9 The heightened pleading standards of Federal Rule of
10 Civil Procedure 9(b) apply to allegations of fraud.² "In
11 alleging fraud or mistake, a party must state with particularity
12 the circumstances constituting fraud or mistake. Malice, intent,
13 knowledge, and other conditions of a person's mind may be alleged
14 generally." See Fed R. Civ. P. 9(b); see also Moore v. Kayport
15 Package Exp., Inc., 885 F.2d 531, 540 (9th Cir. 1989) ("A
16 pleading is sufficient under Rule 9(b) if it identifies the
17 circumstances constituting fraud so that a defendant can prepare
18 an adequate answer from the allegations. While statements of the
19 time, place, and nature of the alleged fraudulent activities are
20 sufficient, mere conclusory allegations of fraud are
21 insufficient.") (internal citations omitted). The Ninth Circuit

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2 Contrary to plaintiffs' assertion, California pleading
3 standards do not govern in federal court. See Toscano v.
4 Ameriquest Mortg. Co., No. Civ-F-07-0957-AWI-DLB, 2007 WL
5 3125023, at *6 (E.D. Cal. Oct. 24, 2007). It is well-settled
6 that the Federal Rules of Civil Procedure apply in federal court,
7 irrespective of the source of the subject matter jurisdiction,
8 and irrespective of whether the substantive law at issue is state
9 or federal." See Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097,
10 1102 (9th Cir. 2003) (citing Hanna v. Plumer, 380 U.S. 460, 462-
11 474 (1965)).

1 has made clear that this heightened pleading standard also
2 applies to fraudulent concealment claims. See Kearns v. Ford
3 Motor Co., 567 F.3d 1120, 1126-27 (9th Cir. 2009).

4 The elements of an action for fraud and deceit based on
5 concealment are:

6 (1) the defendant must have concealed or
7 suppressed a material fact; (2) the defendant
8 must have been under a duty to disclose the fact
to the plaintiff; (3) the defendant must have
intentionally concealed or suppressed the fact
with the intent to defraud the plaintiff; (4) the
plaintiff must have been unaware of the fact and
would not have acted as he did if he had known of
the concealed or suppressed fact, and (5) as a
result of the concealment or suppression of the
fact, the plaintiff must have sustained damage."

12 See SCC Acquisitions Inc. v. Cent. Pac. Bank, 207 Cal. App. 4th
13 859, 864 (4th Dist. 2012).

14 The complaint's allegations of fraudulent concealment
15 fail to satisfy the heightened pleading standards of Federal Rule
16 of Civil Procedure 9(b) in several regards. Plaintiffs fail to
17 provide any specific factual allegations to support their claim
18 that Mercedes-Benz USA knew of the alleged defect and intended to
19 conceal it from plaintiffs before the Vehicle was sold.

20 Plaintiffs do not allege how Mercedes-Benz was aware of the
21 alleged defects, when Mercedes-Benz became aware of the defect,
22 what exactly it was aware of, that Mercedes-Benz had exclusive
23 knowledge of this alleged defect in the Vehicle at the time
24 plaintiffs acquired it, or how Mercedes-Benz concealed this fact
25 from the plaintiffs. (See Mot. for J. on the Pleadings at 7.)
26 The only allegations in the complaint relating to Mercedes-Benz's
27 knowledge of the alleged defect are conclusory statements which

1 state that "defendant was well-aware of the non-conformities and
2 defects relating to the air conditioning system" and had "advance
3 knowledge of which only defendant could know." (See Compl. at ¶
4 42.) Such conclusory statements, unsupported by specific facts,
5 do not suffice.

6 Moreover, to plead the circumstances of omission with
7 specificity, plaintiffs must describe the content of the omission
8 and where the omitted information should or could have been
9 revealed, as well as provide representative samples of
10 advertisements, offers, or other representations that plaintiff
11 relied on to make her purchase and that failed to include the
12 allegedly omitted information. See Marolda v. Symantec Corp.,
13 672 F. Supp. 2d 992, 1002 (N.D. Cal. 2009). Plaintiffs have
14 provided none of this information and simply state that "[p]rior
15 to purchasing the Vehicle, plaintiffs reviewed marketing
16 brochures, viewed television commercials and/or heard radio
17 commercials about the qualities of the Mercedes-Benz GLE350" and
18 that plaintiffs "relied on statements made during the sales
19 process." (See Compl. at ¶ 15.) Such allegations fall far short
20 of the specificity required for fraudulent concealment claims.

21 Plaintiffs have additionally failed to plausibly allege
22 circumstances that would impose upon Mercedes-Benz a duty to
23 disclose the alleged defect to them. (See Reply in Supp. of Mot.
24 for J. on the Pleadings at 10.) "[W]here material facts are
25 known to one party and not to the other, failure to disclose them
26 is not actionable fraud unless there is some relationship between
27 the parties which gives rise to a duty to disclose such known
28 facts." LiMandri v. Judkins, 52 Cal. App. 4th 326, 336 (4th

1 Dist. 1997). Plaintiffs have alleged in their complaint that
2 Mercedes-Benz was not involved in the sales transaction of the
3 Vehicle; rather, plaintiffs obtained the Vehicle from Niello
4 Volkswagen in Sacramento, California. (See id. at ¶ 5; see
5 Docket No. 1 at Ex. 1.)

6 Plaintiffs argue that they "do not need to show a
7 direct contractual nexus or special relationship where there is a
8 safety issue" (See Opp'n to Mot. for J. on Pleadings at
9 8.) Although plaintiffs posit in their opposition that the
10 alleged air-conditioning defect is "a significant vehicle defect
11 because it relates to a known mold growth issue that renders the
12 air conditioning unstable and, ultimately, unsafe because of the
13 possibility that mold and mold spores could be injected into the
14 cabin environment and inhaled by vehicle occupants," (see id. at
15 1), they allege no such information in the complaint. Instead,
16 they simply aver that "malodorous odors emanat[ed] from the air
17 conditioning system" and then assert in a conclusory fashion that
18 "the vehicle is defective and unsafe." (See Compl. at ¶¶ 42-47.)
19 Plaintiffs failed to allege any specific facts in their complaint
20 which would indicate that the alleged air conditioner defect
21 caused the vehicle to be unsafe, and they admit that Mercedes-
22 Benz was not a party to the transaction of the Vehicle here.
23 Accordingly, plaintiffs have failed to allege facts to establish
24 that Mercedes-Benz owed them a duty to disclose any alleged
25 defects.

26 In sum, plaintiffs have failed to adequately allege
27 particularized facts supporting knowledge of falsity or intent to
28 conceal by Mercedes-Benz, the circumstances surrounding the

1 alleged omissions of evidence, or that Mercedes-Benz owed a duty
2 to disclose the alleged defects to plaintiffs. Plaintiffs'
3 fraudulent concealment claim therefore fails to meet Rule 9(b)'s
4 pleading standard, and the court will dismiss it.

5 B. Economic Loss Doctrine

6 Mercedes-Benz additionally argues that plaintiffs'
7 fraudulent concealment claim is barred by the economic loss rule.
8 (See Mot. for J. on Pleadings at 10.) "Economic loss consists of
9 damages for inadequate value, costs of repair and replacement of
10 the defective product or consequent loss of profits -- without
11 any claim of personal injury or damages to other property."

12 Robinson Helicopter Co., Inc. v. Dana Corp., 34 Cal. 4th 979, 988
13 (2004). "The economic loss rule requires a purchaser to recover
14 in contract for purely economic loss due to disappointed
15 expectations unless he can demonstrate harm above and beyond a
16 broken contractual promise." See id. Although plaintiffs
17 contend that Robinson Helicopter supports their position that
18 their fraudulent concealment claim is not barred by the economic
19 loss rule, the California Supreme Court made clear that the
20 exception to the economic loss rule only applies to fraud claims
21 involving affirmative misrepresentations, and does not extend to
22 fraudulent concealment claims based exclusively on omissions.

23 See id. at 993 ("Our holding today is narrow in scope and limited
24 to a defendant's affirmative misrepresentations on which a
25 plaintiff relies, and which expose plaintiff to a liability for
26 personal damages independent of the plaintiff's economic loss.").
27 Accordingly, "in actions arising from the sale or purchase of a
28 defective product, plaintiffs seeking economic losses must be

1 able to demonstrate that either physical damage to property
2 (other than the defective product itself) or personal injury
3 accompanied such losses; if they cannot, then they would be
4 precluded from any tort recovery in strict liability or
5 negligence.” Ladore v. Sony Comput. Ent. Am., LLC, 75 F. Supp.
6 3d 1065, 1075 (N.D. Cal. 2014) (internal citations omitted).

7 Plaintiffs’ complaint does not include any allegations
8 that plaintiffs suffered personal injury or any other damages
9 apart from the economic damages associated with their warranty
10 claims. Nor does it include any affirmative misrepresentations
11 prior to or at the time of sale. Federal courts throughout
12 California have recently held in analogous “lemon law” cases that
13 the economic loss rule bars fraud claims premised solely on
14 concealment and omissions where plaintiffs have failed to allege
15 personal injury or damage to property. See Sloan v. Gen. Motors
16 LLC, Case No. 16-cv-07244-EMC, 2020 WL 1955643, at *23 (N.D. Cal.
17 Apr. 23, 2020); Thompson v. BMW of N. Am. LLC, Case No. SACV 17-
18 01912-CJC-KS, 2019 WL 988694, at *5 (C.D. Cal. Jan. 10, 2019);
19 Hsieh v. FCA US LLC, 440 F. Supp. 3d 1157, 1162-63 (S.D. Cal.
20 2020). The economic loss doctrine therefore provides an
21 additional basis to dismiss the complaint’s fraudulent
22 concealment claim.

23 Because plaintiffs have not adequately alleged a
24 fraudulent concealment claim, their prayer for punitive damages
25 arising out of that claim also fails. Plaintiffs have
26 additionally failed to plead specific allegations demonstrating
27 malicious or oppressive conduct by Mercedes-Benz that would
28 entitle them to punitive damages. Under California law, a

1 plaintiff may recover punitive damages "where it is proven by
2 clear and convincing evidence that the defendant has been guilty
3 of oppression, fraud, or malice." See Harper Const. Co., Inc. v.
4 Nat'l Union Fire Ins. Co., Case No. 18-cv-00471-BAS-NLS, 2020 WL
5 1820124, at *7 (S.D. Cal. Apr. 10, 2020) (citing Cal. Civ. Code §
6 3294(a)). Moreover, "[a] request for punitive damages against a
7 corporation must include allegations relating to the
8 corporation's officers, directors, or managing agents." See id.
9 Here, plaintiffs merely make a conclusory statement that "[t]he
10 conduct of the defendant in failing to disclose this information
11 to plaintiffs [was] done in malice." (See Compl. at ¶ 44.) Such
12 conclusory allegations, utterly unsupported by specific facts,
13 are insufficient to support a claim for punitive damages under
14 California law.

15 IT IS THEREFORE ORDERED that defendant's Motion for
16 Judgment on the Pleadings as to plaintiffs' third claim for
17 fraudulent concealment and plaintiffs' prayer for punitive
18 damages (Docket No. 7) be, and the same hereby is, GRANTED.
19 Plaintiffs have twenty days from the date this Order is signed to
20 file an amended complaint if they can do so consistent with this
21 Order.

22 Dated: June 2, 2021


23 **WILLIAM B. SHUBB**
24 **UNITED STATES DISTRICT JUDGE**

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